The article was alleged to be misbranded in that representations in the labeling regarding its efficacy in effecting reduction of body weight in the consumer were false and misleading.

The article was also alleged to be misbranded under the provisions of the law applicable to foods, as reported in F. N. J. No. 2977.

On June 30, 1941, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

596. Misbranding of Pro-Gro Poultry Supplement. U. S. v. 3 10-Pound, 3 25-Pound, and 1 335-Pound Containers of Pro-Gro. Consent decree of condemnation and destruction. (F. D. C. Nos. 4379, 4380. Sample Nos. 43876–E, 43877–E.)

On April 21, 1941, the United States attorney for the District of Kansas filed a libel against the above-named product at Ottawa, Kans., alleging that it had been shipped by the Pro-Gro Co. from Kansas City, Mo., on or about January 28, 1941; and charging that it was misbranded. With the exception of the portion contained in one of the 10-pound containers, the article was unlabeled.

Analyses of samples of the product showed that it consisted essentially of cut plant material containing minute proportions of hydrochloric and sulfuric acids.

The labeled portion of the article was alleged to be misbranded in that the statements, "Pro—Produces More Eggs! Gro Grows More Meat! Poultry Supplement Fertility . . . Vitality," were false and misleading since they represented that it would be efficacious for the purposes recommended, whereas it would not be efficacious for such purposes; and in that the name "Pro-Gro," a combination of letters, was a false and misleading device which was interpreted to mean that the article would produce more eggs and grow more meat. Both the labeled and the unlabeled portions were alleged to be misbranded in that the article was in package form and the label failed to bear (1) a statement of the common or usual names of the active ingredients, and (2) an accurate statement of the quantity of contents. The portion in the unlabeled containers was alleged to be misbranded further in that it was in package form and did not bear a label containing the name and place of business of the manufacturer, packer, or distributor.

It also was alleged to be misbranded under the provisions of the law applicable to foods, as reported in F. N. J. No. 2858.

On June 21, 1941, the claimant having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered destroyed.

597. Misbranding of Udder-Balm. U. S. v. 7⅛ Cases of Udder-Balm. Default decree of condemnation and destruction. (F. D. C. No. 3683. Sample No. 55386–E.)

On January 23, 1941, the United States attorney for the Western District of Washington filed a libel against the above-named product at Seattle, Wash., alleging that the article had been shipped in interstate commerce on or about June 15, 1939, by Cash Davis Laboratories from St. Helens, Oreg.; and charging that it was misbranded.

Analysis of a sample of the article showed that it consisted essentially of free iodine, combined iodine, petrolatum, and a fatty acid.

The article was alleged to be misbranded in that representations in the labeling that it would be efficacious for the treatment of mastitis and cowpox were false and misleading since it would not be efficacious for such purposes.

On June 17, 1941, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

598. Misbranding of worm remedies for poultry and hogs. U. S. v. 25 Packages of Kon-Trold Kamala Flock Treatment for Poultry, 17 Packages of Kon-Trold Nicotine for Poultry Round Worms, and 29 Packages of Kon-Trold Nicotine Herd Treatment for Hog Round Worms. Default decree of condemnation and destruction. (F. D. C. Nos. 4239 to 4241, incl. Sample Nos. 60046–E to 60048–E, incl.)

On April 10, 1941, the United States attorney for the District of Oregon filed a libel against the above-named products at Eugene, Oreg., alleging that they had been shipped by Kon-Trold Products Corporation from Burbank, Calif., on or about July 16, 1940; and charging that they were misbranded.

Analyses of samples of the articles showed that the Kamala Flock Treatment for Poultry consisted essentially of kamala resins and siliceous material; that the Nicotine for Poultry Round Worms consisted essentially of nicotine and rosin; and that the Nicotine Herd Treatment consisted essentially of nicotine and rosin.

The articles were alleged to be misbranded in that statements in the labeling representing that the Flock Treatment for Poultry would be efficacious in the treatment of poultry afflicted with tapeworms; that the Nicotine for Poultry Round Worms would be efficacious for treatment and prevention of roundworms in poultry; and that the Herd Treatment for Hog Round Worms would be efficacious for treatment of hog roundworms and beneficial at any time to hogs of all ages, were false and misleading since they would not be efficacious for such purposes.

The Nicotine for Poultry Round Worms was alleged to be misbranded further in that the statement of active ingredients, which appeared in type of a very small size, was not placed on the label with such conspicuousness as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

On May 9, 1941, no claimant having appeared, judgment of condemnation was entered and the products were ordered destroyed.

DRUGS FALSELY LABELED AS TO QUANTITY OF CONTENTS[4]

599. Alleged misbranding of rubbing alcohol compound. U. S. v. Adde, Inc. Plea of not guilty. Case tried to the court sitting as a jury of one; verdict of not guilty. (F. D. C. No. 2092. Sample Nos. 321–E, 322–E, 13026–E, 13027–E, 64236–E.)

This case was instituted on charges that the product was short of the declared volume.

On August 1, 1940, the United States attorney for the District of Maryland filed an information against Adde, Inc., a corporation, Baltimore, Md., alleging shipment on or about November 1 and 29 and December 26 and 27, 1939, from the State of Maryland into the States of North Carolina and Washington of quantities of rubbing alcohol compound that was misbranded.

The article was alleged to be misbranded in that the following statements on the carton and bottle labels, "Contents One Pint," "Contents 16 Fl. Ozs.," and "Contents 16 Fluid Ozs.," were false and misleading since each of the bottles did not contain 1 pint or 16 fluid ounces of rubbing alcohol, but did contain a smaller amount.

On October 20, 1941, a plea of not guilty was entered on behalf of the defendant and the case was tried before the court sitting as a jury of one. At the conclusion of testimony the court ordered the entry of a verdict of not guilty and delivered the following oral opinion:

COLEMAN, *District Judge.* "The court, sitting as a jury, concludes that the defendant company is entitled to a directed verdict in its favor, for the following reasons:

"The defendant company is charged with violating Section 502 (b) (2) of the Act of June 25, 1938, 21 U. S. C. A. Sec. 352 (b) (2), known as the Federal Food, Drug and Cosmetic Act, which provides that 'A drug or device shall be deemed to be misbranded—(b) if in package form unless it bears a label containing * * * (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by law.'

"Regulations have been prescribed under this section of the act and they have the force of law, provided they are consistent with the statute. In other words, rules promulgated by an administrative body in support of the legislation which it is charged with enforcing, are always subject to judicial review. In the present case the regulation here relied upon by the Government, namely, subdivision (j) of the regulations prescribed by the Secretary pursuant to section 502 of the act, is found by the court to be a reasonable and proper regulation. It reads as follows, insofar as its provisions relate to the present inquiry: 'Where the statement expresses the minimum quantity, no variation below the stated minimum shall be permitted except variations below the stated weight or measure of a drug caused by ordinary and customary exposure, after such drug is introduced into interstate commerce, to conditions which normally occur in good distribution practice and which unavoidably

[4] See also Nos. 546, 551, 554–556, 571, 582, 583, 596.